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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,091	03/19/2001	Walter J. Ledergerber	263/103	2870

34263 7590 02/26/2004

O'MELVENY & MEYERS  
114 PACIFICA, SUITE 100  
IRVINE, CA 92618

EXAMINER
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ISABELLA, DAVID J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 02/26/2004

28

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/813,091

Applicant(s)

LEDERGERBER, WALTER J.

Examiner

DAVID J ISABELLA

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,13,94-99,101-105,110,112-114,122 and 158-161 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,13,94-98,101,105,112-114 and 158-161 is/are rejected.
- 7) ☒ Claim(s) 4,99 and 122 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Status of the Claims***

Claims 1,3,4,13,94-99,101-105,110,112-114,122,158-161 are pending for action.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,3,13,94-99,101,105,112-114,158-161 are rejected under 35 U.S.C. 102(e) as being anticipated by Campbell et al (4743480).

An implantable sheet comprising a sheet of ePTFE having a non-textured first surface and a textured second surface including a plurality of continuous parallel channels with a plurality of ridges disposed between the channels is disclosed by Campbell, et al (see columns 2 and 3).

Claim 3, looking at the cut tube, as a whole, will show a pattern of a nested configuration.

Claim 13 does not preclude the first surface being non-textured.

Claim 94, since the bottom of the channel of the die is not planar the resulting structure of the tube would have a cross sectional dimension of varying width.

Claim 95, see discussion to claim 1 supra.

Claims 96-98, 101, as broadly worded the features as claimed is disclosed by Campbell, et al.

Claims 105 and 112, see figure 1 for dimensional relationship of troughs and ridges.

Claims 113 and 114, the body of the claims fails to set forth additional structure to perform the intended function of tissue ingrowth and disorganization of scar tissue formation. Based on the structure of the device as set forth in claim 1, the device of Campbell, et al meets the limitation thereof.

Claims 158-161 fails to distinguish over the structured device of Campbell, et al.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 13, 94-98, 101-105, 110, 112-114, 158-161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hung (4034751) Campbell et al (4743480) or Milkulich et al (4651721).

Hung discloses an implantable sheet comprising a sheet of polymer having a non-textured first surface and a textured second surface including a plurality of

continuous parallel channels with a plurality of ridges disposed between the channels. The polymer may be various polymer materials including PTFE. It is not clear if ePTFE is included in this grouping however, ePTFE was not discovered until the early 1970 and it's use since that time as an equivalent material for use to make implantable devices is well documented. If not inherent in the material of Hung, to use ePTFE as a material for making implantable devices due to it's superior properties including directional strength and hoop strength, would have been obvious from the teachings of either of Campbell et al or Milkulich et al.

Claim 3, looking at the sheet as a whole, will show a pattern of a nested configuration as broadly claimed.

Claim 13 does not preclude the first surface being non-textured.

Claim 94, since the bottom of the channel of the fabric is not planar the resulting structure of the sheet would have a cross sectional dimension of varying width.

Claim 95, see discussion to claim 1 supra.

Claims 96-98,101,102,103,104 as broadly worded see the figures showing the features as claimed.

Claims 105 and 112, see figures for dimensional relationship of troughs and ridges.

Claim 110, see laminated sheet as shown in the figures.

Claims 113 and 114, the body of the claims fails to set forth additional structure to perform the intended function of tissue ingrowth and disorganization of scar tissue

formation. Based on the structure of the device as set forth in claim 1, the device of Hung meets the limitation thereof.

Claims 158-161 fails to distinguish over the structured device of Hung.

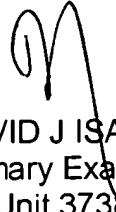
***Allowable Subject Matter***

Claims 4,99 and 122 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
February 19, 2004